

**REMARKS**

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested in light of the remarks which follow.

Applicants filed a First Information Disclosure Statement herein on July 3, 2003, at the same time as this application was filed. It is requested that an Examiner-initialed copy of applicants' Form PTO-1449 (three sheets) be returned to the undersigned with the next official communication.

It is also requested that the various domestic priorities that are claimed in the first paragraph of the specification be duly acknowledged.

Claims 1-48 are now in this application. Claims 1-7 and 9-20 have been retained in their original form, while Claim 8 has been amended to correct an obvious error in dependency. Clearly, Claim 8 further limits Claim 7, not Claim 6.

New Claims 21-39 have been added to provide narrower generic and subgeneric claims as well as species claims drawn to the species elected below and other species closely related thereto.

New Claim 21 is patterned after original Claim 12, but has a narrower definition of  $R_{201}$ ,  $R_{202}$  and  $R_{204}$ ; in the definition of  $R_{204}$ , the definition of "aryl" is based at least on the disclosure of paragraph [0012] of the specification. New Claims 22-25 and 27 are based at least on paragraph [0030] of the specification. New Claim 26 has basis at least in the first sentence of paragraph [0012] of the specification. New Claims 28 and 29 further limit the definition of aryl in Claim 21. New Claim 30 further limits the subject matter of original Claim 13. New Claims 31 and 32 further limit the subject matter of original Claim 14. New Claims 33 and 34

further limit the subject matter of original Claim 15. New Claims 35 and 36 further limit the subject matter of original Claim 16. New Claims 37-39 are drawn to specific compounds of the invention shown in Table 13 of the specification (compounds 128-3 through 140-3). New Claims 40-42 are drawn to compositions comprising a compound of new Claim 21, but otherwise paralleling original Claims 18-20. New Claims 43-48 are method of use claims paralleling original Claims 1 and 7-11, respectively, but commensurate in scope with new generic compound Claim 21. It is clear that no new matter has been introduced by the new claims.

In response to the restriction requirement, applicants hereby elect, with traverse, Group II, Claims 12-20, drawn to products of formula (XX); new Claims 21-42 are also drawn to the elected Group II.

The restriction requirement is traversed, however, first because the claims drawn to the non-elected Group I methods of use, namely original Claims 1-11 and new Claims 43-48, are commensurate in scope with the elected product claims; and secondly, as a corollary to the first reason, the process for using the product as claimed cannot be performed by a materially different product as shown in U.S. Patent No. 5,232,940. The process as claimed absolutely requires that it be performed using a compound of formula (XX); the claimed process thus cannot be performed using a materially different compound such as the compound of the '940 patent. Withdrawal of the restriction requirement and examination of all of the claims on the merits are respectfully requested.

In the event that this restriction requirement is made final, despite the foregoing remarks, then applicants request that, upon the finding of allowable subject matter in elected Group II, the Examiner rejoin and examine the claims in non-

elected Group I. At the present time, the method of use claims depend from or otherwise include all of the limitations of the elected product claims and it is applicants' intention to amend the method of use claims are needed to maintain this correspondence in scope throughout prosecution of this application.

In response to the requirement for election of species, applicants hereby elect, with traverse, the single compound identified as Compound No. 128-3 in Table 13 of the specification. This is a compound of formula (XX) wherein  $R_{201}$  is cyano;  $R_{202}$  is  $S(O)_hCF_3$  wherein  $h$  is 1;  $R_{204}$  is  $N(R_{205})C(O)aryl$  wherein  $R_{205}$  is  $CH_3$  and aryl is 2-thienyl;  $R_{211}$  is Cl;  $X_1$  is C-Cl; and  $R_{213}$  is  $CF_3$ . All of Claims 12-15 and 18-42 read on the elected species, while Claims 1-4, 7-11 and 43-48 read on a method of using the elected species. Claims 37-39 all specifically claim the elected species, with Claim 39 being drawn solely to the elected species. The election of species requirement is nevertheless traversed because election of species normally presupposes that no generic claim is allowable and no art has been adduced which would militate against allowance of a generic claim herein.

As the Examiner will see from Table 13, there are numerous compounds shown in the table which have very strong structural resemblances each to the other, and function similarly in the present invention. Applicants are particularly interested in protecting the species of Table 13 in this application. It is noted that these compounds differ from each other only in the definitions of  $R_{202}$ ,  $R_{213}$  and aryl. The differences in  $R_{202}$  are only in whether  $h$  is 0, 1 or 2, while  $R_{213}$  can only be  $CF_3$  or  $SF_5$ . The aryl groups are all 5- or 6- ringed systems optionally having a hetero ring atom which is S, O or N. This is a small group of similarly sized ring systems which represent a small portion of the entire structure.

Applicants believe that original generic Claim 12 represents a suitable genus for examination. Nevertheless, new generic Claim 21, which is considerably narrower in scope, is offered in the event that the Examiner finds Claims 12 too unwieldy for examination purposes. If the Examiner considers Claim 21 to encompass too much diversity for examination in a single application, he is urged to telephone the undersigned so that a mutually agreeable genus can be devised.

In view of the foregoing, further examination of all of the claims on the merits is believed to be in order and is earnestly solicited.

Respectfully submitted,

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